

RECORDATION NO. 8661 Filed & Recorded

**DETROIT
BANK
& TRUST**

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INTERSTATE COMMERCE COMMISSION

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FEE OPERATION BR.

ROBERT C. ROBINSON
VICE PRESIDENT

INTERSTATE COMMERCE COMMISSION January 14, 1977

RECORDATION NO. 8661 Filed & Recorded

Secretary

Interstate Commerce Commission
Constitution Ave. & 12th, N.W.
Washington, D.C. 20423

JAN 17 1977 - 11 43 AM

INTERSTATE COMMERCE COMMISSION

Date JAN 17 1977

Fee \$ 70

CC Washington, D.C.

Subject: Assignment of Lease and Security Agreements
covering Lease Receivables and Equipment

Dear Sir

Enclosed please find for filing and recordation under Section 20-C
of the Interstate Commerce Act and the regulations promulgated there-
under, two fully executed and acknowledged counterparts and one
certified true copy of the following described documents:

1. Assignment of Lessor's interest in Lease between Bay Aviation
Company and The Detroit Bank and Trust Company dated
January 12, 1977.
2. A Security Agreement covering equipment executed by Charles A.
Pinkerton, Jr. dated January 12, 1977.
3. A Security Agreement covering Lease Receivables executed by
Charles A. Pinkerton, Jr. dated January 12, 1977.

INTERSTATE
COMMERCE COMMISSION
RECEIVED

JAN 17 1977

ADMINISTRATIVE SERVICES
MAIL UNIT

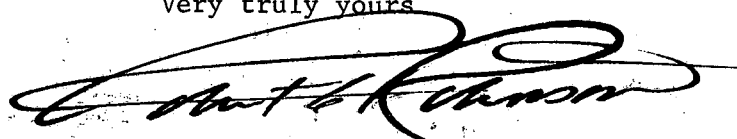
A general description of the equipment covered by the above documents
is as follows:

One (1) remanufactured M-K designated Locomotive
Serial No. 84779

Enclosed you will find our Cashier Check No. LD-2196 in the amount
of \$70.00 made payable to the Interstate Commerce Commission to cover
recordation fees for the above.

Please return one recorded counterpart of the aforesaid documents
to my attention.

Very truly yours



THE DETROIT BANK & TRUST COMPANY
P.O. Box 59, Detroit, MI 48231

Enclosures

SECURITY AGREEMENT

(Equipment)

For value received, the undersigned, herein called "Debtor", hereby grants to THE DETROIT BANK AND TRUST COMPANY, a Michigan banking corporation, whose principal office is located at 211 West Fort Street, Detroit, Michigan, herein called "Bank", a security interest in all machinery and equipment of the Debtor including but not limited to the property hereinafter described and/or described in Schedule A attached hereto and made a part hereof:

One (1) remanufactured M-K designated Locomotive
Serial Number 84779

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STATE OF MICHIGAN
DEPARTMENT OF TREASURY

and also in (i) all other similar property now owned or hereafter acquired by Debtor, (ii) all additions, attachments, accessions, parts, replacements, substitutions and renewals of or for all machinery and equipment of the Debtor, wherever situated, now owned or hereafter acquired, (iii) all property of Debtor at any time in possession of Bank, (iv) all balances of deposit accounts of Debtor from time to time with Bank, and (v) the proceeds and products of all of the foregoing (herein collectively called the "Collateral"), to secure payment of any and all indebtedness and liabilities whatsoever of Debtor to Bank, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and howsoever evidenced, including obligations arising from applications or agreements for the issuance of letters of credit or otherwise (herein collectively called the "Indebtedness").

1. WARRANTIES, COVENANTS AND AGREEMENTS. Debtor warrants, covenants and agrees as follows:

- 1.1 The Collateral has been acquired (or will be acquired) for use primarily in business. Bank at its option may disburse loan proceeds directly to the seller of any Collateral to be acquired by Debtor with proceeds of loans from Bank.
- 1.2 All items constituting a part of the Collateral which are fixtures under applicable law or which are in fact attached to real estate are described in Schedule B annexed hereto. There is likewise set forth in Schedule B a description of the real estate upon which all such items are located and the name(s) and address(es) of the owner(s) thereof. Debtor upon demand of Bank shall furnish Bank with consents or disclaimers filed by all persons having an interest in the real estate (including owners, mortgage holders and Lessees) consenting to Bank's security interest and acknowledging its priority or disclaiming any interest in the Collateral. Debtor shall promptly notify Bank of any after-acquired Collateral which may be or become fixtures under applicable law.
- 1.3 At the time any Collateral becomes subject to a security interest in favor of Bank, Debtor shall be deemed to have warranted that (i) Debtor is the lawful owner of such Collateral and has the right and authority to subject the same to a security interest in Bank and (ii) none of the Collateral is subject to any security interest other than that in favor of Bank and there are no financing statements on file other than in favor of Bank.
- 1.4 Debtor will keep the Collateral free at all times from any and all liens, security interests or encumbrances other than those in favor of Bank. Debtor will not, without the prior written consent of Bank, sell or lease, or permit or suffer to be sold, or leased, all or any part of the Collateral. Bank or its agents or attorneys may at any and all reasonable times inspect the Collateral and may enter upon any and all premises where the same is kept or might be located. Debtor shall allow Bank to examine, inspect and make abstracts from, or copy any of Debtor's books and records (relating to the Collateral or otherwise).
- 1.5 Debtor will do all acts and things, and will execute all writings requested by Bank to establish, maintain and continue perfected and first the security interest of Bank in the Collateral, and will promptly on demand pay all costs and expenses of filing and recording, including the costs of any searches deemed necessary by Bank to establish and determine the validity and the priority of Bank's security interest. With respect to any vehicle constituting a part of the Collateral, Debtor will take all steps necessary to effect upon the certificate of title to any such vehicle an indication of the security interest of Bank therein.
- 1.6 Debtor will pay promptly and within the time that they can be paid without interest or penalty, all taxes, assessments and similar imposts and charges which are now, or hereafter during the effective period of this Agreement may become, a lien, charge or encumbrance upon any of the Collateral except to the extent contested in good faith. If Debtor fails to pay any such taxes, assessments or other charges as they become due, Bank shall have the option to do so and Debtor agrees to repay all amounts so expended by Bank with interest at the highest rate charged by Bank to Debtor on any Indebtedness or part thereof.
- 1.7 Debtor will keep the Collateral in good condition and shall safeguard and protect the same from loss, damage or deterioration from any cause whatsoever. Debtor has and will maintain at all times during the effective period of this Agreement with respect to the Collateral, insurance against fire and other risks customarily insured against by persons engaged in similar business to that of Debtor, in such amounts, containing such terms, in such form, for such purposes and written by such companies as may be satisfactory to Bank, payable to Bank as its interests may appear, and Debtor will deliver to Bank at its request evidence satisfactory to Bank that such insurance has been so procured and made payable to Bank. If Debtor fails to maintain satisfactory insurance, Bank shall have the option to do so and Debtor agrees to repay all amounts so expended by Bank, with interest at the highest rate charged by Bank to Debtor on any Indebtedness or part thereof.
- 1.8 Debtor will reimburse Bank in accordance with the provisions of the Uniform Commercial Code for all expenses, including reasonable attorney fees and legal expenses incurred by Bank in seeking to collect the Indebtedness or any part thereof, in defending the priority of Bank's security interest or in pursuing any of its rights or remedies hereunder.

2. DEFAULTS, ENFORCEMENT AND APPLICATION OF PROCEEDS

- 2.1 Upon the occurrence of any of the following events (herein sometimes called an "Event of Default"), Debtor shall be in default under this Agreement:
 - (i) Any failure or neglect to comply with, or breach of, any of the terms, provisions, warranties or covenants of this Agreement, and any other agreement or commitment between the Debtor and the Bank; or
 - (ii) Any failure to pay the Indebtedness when due, or such portion thereof as may be due, by acceleration or otherwise; or
 - (iii) If the Collateral or any part thereof ceases to be personal property unless herein shown to the contrary; or
 - (iv) Any warranty, representation, financial statement, or other information made, given or furnished to Bank by or on behalf of Debtor shall be, or shall prove to have been, false when so made, given, or furnished; or
 - (v) Any loss, theft, substantial damage or destruction to or of any of the Collateral, or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection therewith or of any other judicial process of, upon or in respect of Debtor or any of the Collateral; or

- (vi) Sale or other disposition by Debtor of any substantial portion of its assets or property, or death, dissolution, termination of existence, insolvency, business failure, or assignment for the benefit of creditors of or by Debtor or any guarantor; or commencement of any proceedings under any State or Federal bankruptcy or insolvency laws or laws for the relief of Debtors by or against Debtor or any guarantor; or the appointment of a receiver, trustee, court appointee, sequestrator, or otherwise, for all or any part of the property of Debtor or any guarantor; or
 - (vii) Bank deems the margin of Collateral insufficient or itself insecure, in good faith believing that the prospect of payment of the Indebtedness or performance of this Agreement is impaired or shall fear deterioration, removal or waste of the Collateral.
- 2.2 Upon the occurrence of any Event of Default, Bank may at its discretion and without prior notice to Debtor declare any or all of the Indebtedness to be immediately due and payable, and shall have and may exercise any one or more of the following rights and remedies:
- (i) exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code and other applicable law.
 - (ii) institute legal proceedings to foreclose upon and against the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness secured hereby, and to collect the same out of any of the Collateral or proceeds of any sale thereof;
 - (iii) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all of the Collateral;
 - (iv) personally or by agents or attorneys, enter upon any premises where the Collateral or any part thereof may then be located, and take possession of or any part thereof and/or render it unusable; and without being responsible for loss or damage to such Collateral,
 - (a) hold, store, and keep idle, or lease, operate, remove or otherwise use or permit the use of, the Collateral or any part thereof, for such time and upon such terms as Bank may in its sole and complete discretion deem to be in its own best interest, and demand, collect, and retain all hire, earnings, and other sums due and to become due in respect of the same from any party whomsoever, accounting only for net earnings, if any, (unless the Collateral is retained in satisfaction of the Indebtedness, in which case no accounting will be necessary) arising from such use (which net earnings may be applied against the Indebtedness) and charging against all receipts from the use of the same or from the sale thereof, by court proceedings or pursuant to subparagraph (b) below, all other costs, expenses, charges, damages, and other losses resulting from such use;
 - (b) sell, lease and dispose of, or cause to be sold, leased and disposed of, all or, any part of the Collateral at one or more public or private sales, leaseings or other dispositions, at such places and times and on such terms and conditions as Bank may deem fit, without any previous demand or advertisement but with reasonable notification to Debtor of any such sale, lease or other disposal; and except as herein provided, all notice of sale, lease, or other disposition, and advertisement, and other notice or demand, any right or equity of redemption, and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Bank to sell, lease or otherwise, dispose of the Collateral or as to the application by Bank of the proceeds of sale or otherwise, which would otherwise be required by, or available to Debtor under, applicable law are hereby expressly waived by Debtor to the fullest extent permitted by such law.

At any sale pursuant to this Paragraph 2.2, whether under the power of sale or by virtue of judicial proceedings, it shall not be necessary for Bank or a public officer under order of a court to have present physical or constructive possession of the Collateral to be sold. The recitals contained in any conveyances and receipts made and given by Bank or such public officer to any purchaser at any sale made pursuant to this Agreement shall, to the extent permitted by applicable law, conclusively establish the truth and accuracy of the matters therein stated (including, without limiting the generality of the foregoing, the amounts of the principal of and interest on the Notes, the accrual and non-payment thereof and advertisement and conduct of such sale in the manner provided herein and by applicable law); and all prerequisites to such sale shall be presumed to have been satisfied and performed. Upon any sale hereunder of any of the Collateral or any interest therein, the receipt of the officer making such sale under judicial proceedings or of Bank shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see to the application thereof. Any sale hereunder of any of the Collateral or any interest therein shall forever be a perpetual bar against Debtor with respect to such Collateral.

- 2.3 The proceeds of any sale or other disposition of Collateral authorized by this Agreement shall be applied by Bank first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorney's fees and legal expenses incurred by Bank; the balance of the proceeds of such sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal; and the surplus, if any, shall be paid over to Debtor or to such other person or persons as may be entitled thereto under applicable law. Debtor shall remain liable for any deficiency which it shall pay to Bank immediately upon demand.
- 2.4 Nothing herein contained is intended, nor should it be construed, to preclude Bank from pursuing any other remedy provided by law for the collection of the Indebtedness or any portion thereof, or for the recovery of any other sum to which Bank may be or become entitled for the breach of this Agreement by Debtor.
- 2.5 No waiver of default shall be effective unless in writing signed by an officer of Bank, and no waiver of any default or forbearance on the part of Bank in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any such right.
- 2.6 Debtor hereby irrevocably appoints Bank the true and lawful attorney of Debtor (with full power of substitution) in the name, place and stead of, and at the expense of, Debtor:
- (i) to give any necessary receipts or acquittances for amounts collected or received hereunder;
 - (ii) to make all necessary transfers of all or any part of the Collateral in connection with any sale, lease or other disposition made pursuant hereto; and
 - (iii) to execute and deliver for value all necessary or appropriate bills of sale, assignments, and other instruments in connection with any such sale, lease or other disposition, Debtor hereby ratifying and confirming all that its said attorney (or any substitute) shall lawfully do hereunder and pursuant hereto. Nevertheless, if so requested by Bank or a purchaser or lessor, Debtor shall ratify and confirm any sale, lease or other disposition by executing and delivering to Bank or such purchaser or lessor all proper bills of sale, assignments, releases, leases and other instruments as may be designated in any such request.
- 2.7 Debtor also agrees, upon request of Bank, to assemble the Collateral and make it available to Bank at any place designated by Bank which is reasonably convenient to Bank and Debtor.

3. MISCELLANEOUS

- 3.1 This Agreement shall in all respects be governed by and construed in accordance with the laws (including the conflict of laws rules) of the State of Michigan.
- 3.2 This Agreement shall be terminated only by the filing of a Termination Statement in accordance with the applicable provisions of the Uniform Commercial Code. Until terminated, the security interest hereby created shall continue in full force and effect and shall secure and be applicable to all advances now or hereafter made by Bank to Debtor whether or not Debtor is indebted to Bank immediately prior to the time of any such advance.

- 3.3 This Agreement and all such rights and remedies shall inure to the benefit of Bank's successors and assigns and to any other holder who derives from Bank title to or an interest in the Indebtedness or any portion thereof, and shall bind Debtor and the heirs, legal representatives, successors and assigns of Debtor.
- 3.4 The phrase "Uniform Commercial Code" means Act No. 174 of the Michigan Public Acts of 1962, as amended. Except as otherwise herein provided, the terms used in this Agreement shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Uniform Commercial Code.
- 3.5 If there is more than one Debtor, all undertakings, warranties and covenants made by Debtor and all rights, powers and authorities given to or conferred upon Bank shall be made or given jointly and severally.
- 3.6 Notwithstanding any security interest described above, any indebtedness owing from Bank to Debtor can be set off and applied by Bank on any Indebtedness (as herein defined) at any time and from time to time either before or after maturity or demand upon or notice to anyone.
- 3.7 In the event that any mandatory requirement of applicable law shall obligate Bank to give prior notice to Debtor of any action to be taken hereunder, Debtor hereby agrees that a written notice given to at least ten days before the date of any such act, shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time after which any private sale, lease or other disposition intended to be made hereunder is to be made, unless a shorter notice period is reasonable under the circumstances. A notice shall be deemed to be given hereunder when delivered to Debtor or when placed in an envelope addressed to Debtor and deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service. The mailing shall be registered, certified or other first class mail.
- 3.8 Debtor and Bank hereby irrevocably waive the right to trial by jury with respect to any and all actions or proceedings at any time in which Debtor and Bank are parties whether such actions or proceedings arise out of this Agreement or otherwise.

4. STATEMENT OF BUSINESS NAME, RESIDENCE AND LOCATION OF COLLATERAL

Debtor warrants, covenants and agrees as follows:

- 4.1 Debtor's principal place of business is located in the County of _____ State of _____
The mailing address is: _____
No. and Street City Zip Code
- 4.2 If Debtor is an individual or sole proprietor, Debtor's principal place of residence (if any) is located in the County of _____
Iosco, State of Michigan. The mailing address is: 1450 Tawas Beach Road
East Tawas No. and Street Zip Code
City 48730
- 4.3 If not already indicated above, Debtor's principal place of business and residence in Michigan are indicated below:

- 4.4 Until Bank is advised in writing by Debtor to the contrary, all notices, requests and demands required hereunder or by law shall be given to, or made upon Debtor at the address indicated in Paragraph 4.1.
- 4.5 The Collateral will be kept at the address of Debtor shown in Paragraph 4.1 and/or at such other address as indicated below:
120 Oak Street, Tawas City, Michigan 48763
- 4.6 Debtor will give Bank prompt written notice of any change in the above names and/or addresses.

5. SPECIAL PROVISIONS APPLICABLE TO THIS AGREEMENT

Dated and delivered at Detroit,

Michigan

January 12, 1977

CHARLES A. PINKERTON, JR.

By Charles A. Pinkerton, Jr. Debtor

Its _____

By _____

Its _____